
(2008) 10 AHC CK 0039
In the Allahabad High Court

Swastik Components Private Limited	Vs	APPELLANT
Commissioner, Commercial/Trade Tax		RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 8
Constitution of India, 1950 — Article 136

Citation : (2008) 10 AHC CK 0039

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—These three Commercial Tax Revisions arise out of a common orders of the Commercial Tax Tribunal, MOID A Bench, NOIDA deciding Second Appeal No. 103 of 2008 (2002-03) Central; Second Appeal No. 104 of 2008 (2003-04) Central, and Second Appeal No. 105 of 2008 (2004-05) Central, raising a common question of law namely whether the applicant- dealer, holding eligibility certificate u/s 4A of the UP Trade Tax Act for exemptions to pay Central Sales Tax for a period of eight years under the Notification dated 31.3.1995 from 17.1.1997 to 16.1.2005, on graded basis, will be entitled to the exemptions after the amendment of the Central Sales Tax, vide Amendment in Section 8(5) by Finance Act 20 of 2002, on the sales made to unregistered dealers outside the State of U.P, for which form C/D is not produced.

2. Heard Shri Kunwar Saxena and Shri Rishi Raj Kapoor for the applicant. Learned Standing Counsel appears for the department.

3. Brief facts, giving rise to these revisions arc that the applicant as a new manufacturing unit applied and was granted the Eligibility Certificate No. 603 dated 30.4.1998 u/s 4A of the UP Trade lax Act. The certificate provided exemption from Central Sales Tax without furnishing any forms (sales to unregistered dealer outside the state).

4. The exemption was covered by Notifications No. 780 and 781 dated

31.3.1995 issued by the State Government in exercise of powers under Sub-section (5) of Section 8 of Central Sales Tax Act which provides for exemption/reduction in the rate of tax on the sales made in the course of inter-state trade and commerce subject to the conditions specified therein.

5. For the year 2002-03, the applicant made central sale amounting to Rs. 1,20,54,230/- and accordingly tax liability was admitted at Rs. 3, 92, 945/-. The assessing authority, however, vide assessment orders dated 20.8.2004 and 28.4.2006, which was later on rectified on 25.8.2006, estimated tax liability at Rs. 7, 56, 383/-. Aggrieved the applicant filed an appeal before the Joint Commissioner (Appeals) Trade Tax, NOIDA which was dismissed. The second appeal was dismissed by the Trade Tax Tribunal NOIDA on 23.7.2008.

6. For the year 2003-04 the applicant made central sales amounting to Rs. 1,27, 80, 756/- and accordingly tax liability was admitted at Rs. 5, 05, 231/-. The assessing authority, however, vide assessment order dated 7.2.2006, which was later on rectified on 19.10.2006, estimated tax liability at Rs. 8, 70, 032. Aggrieved the petitioner filed an appeal before the Joint Commissioner (Appeals) Trade Tax, NOIDA which was dismissed. The second appeal was dismissed by the Trade Tax Tribunal NOIDA on 23.7.2008.

7. For the year 2003-04, the applicant made central sales amounting to Rs. 1,42,04,775/- and accordingly tax liability was admitted at Rs. 5, 07, 147/-. The assessing authority, however, vide assessment order dated 22.1.2007, which was later on rectified on 14.8.2006, estimated tax liability at Rs. 6, 60, 403/-. Aggrieved the applicant filed an appeal before the Joint Commissioner (Appeals) Trade Tax NOIDA which was dismissed. The second appeal was dismissed by the Trade Tax Tribunal NOIDA on 23.7.2008.

8. The applicant is engaged in the business of manufacture and sale of "Sintered Bushes & Structural Parts" under the Eligibility Certificate No. 603 dated 30.4.1998 issued u/s 4A of the UP Trade Tax. In pursuance of Notification No. TT-II-780 dated 31.3.1995 the exemption/reduction in the rate of tax on central sales in the State of U.P. on or after 1.4.1995 but not later on 31.3.2000, were subject to conditions specified in the notification. A similar Notification No. TT-II 781 was issued on 3.3.1995 by the State Government in exercise of powers under Sub-section (5) of Section 8 of the Central Sales Tax Act, whereby exemption/reduction in the rate of tax was provided on the sales made in the course of inter-state sales and commerce subject to conditions specified in the Notification.

9. The benefit of exemption was provided to the applicant from 17.1.1997 to 16.1.2005 i.e. for a period of eight years from the date of first sale. According to the certificate and the terms of the certificate the maximum mandatory limit, by which the benefit of exemption from tax or reduction in the rate of tax, could be obtained amounting to Rs. 95, 31, 238/-corresponding to 175% of the fixed

capital investment. In the first and second year no tax was payable. In the third and fourth year only 25% of the total amount of the tax was payable. In the fifth and sixth years 50% of the total tax was payable and in the seventh and eighty year, 75% of the total tax was payable. The remaining amount in all these years were liable to be set off from maximum mandatory limit specified in the eligibility certificate.

10. The Central Sales Tax Act was amended by Finance Act No. 20 of 2002 published on 13.5.2002. The amendment to Sub-section (5) of Section 8 restricted the powers of the State Government to the extent that on being specified that it was necessary to do so in public interest, by notification in the Official Gazette and subject to certain conditions as may be specified therein the State Government may direct that no tax would be payable in , respect of inter-state as well as by a dealer having his place of business in the State or tax payable to be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) of the Central Sales Tax Act on the condition that the requirements laid down in Sub-section (4) of Section 8 were fulfilled. The...exemption from tax or liability of tax, at a lower rate by a notification u/s 8(5) of the Central Sales Tax Act was to be confined only if the sales were made against Form-C or D.

10. It is contended that the State Government did not amend the Notification Nos. TT-II 78 dated 31.3.1995 and TT-II 781 dated 31.3.1995. The State Government considered but did not find out necessary to amend these notifications and that the benefits under the Notification TT-II-781 dated 31.3.1995 u/s 8(5) of the Central Sales Act continued to operate in the case of all those persons, who were found complying with the conditions and were given exemptions by the State Government.

12. The Commercial Tax Tribunal, by its judgment dated 23.7.2008 under challenge, has upheld the order of the appellate authority on the ground that amendments in the Central Sales Tax Act by the Finance Act No. 20 of 2002 w.e.f. 13.5.2002 will by statutory application amend the Notifications issued under the unamended Central Sales Tax Act and that since the Act itself has been amended, the principle of promissory estoppel are not attracted. Section 8(5) has been amended w.e.f. 13.5.2002 and thus the exemption from Central Sales Tax after 13.5.2002 can be allowed only on furnishing of Form C & D of the Central Sales Tax Act. With regard to the interim orders passed by the High Court in some other matters, the Tribunal observed that the interim orders were confined to petitioners in the writ petitions and are not applicable to the appellant.

13. Shri K. Saxena submits that after the amendment the State Government did not find it necessary to amend the Notification Nos. 780 and 781 dated 31.3.1995, whereas other Notifications were amended. Consequently the exemptions allowed by the Notifications dated 31.3.1995 will not be affected by the amendment in Section 8(5) of the Central Sales Tax Act. He would submit

that until the Notification has withdrawn or amended the exemptions cannot be denied on the sales which are not covered by Form C & D and that Annexure-1 to the Notification No. TT-II-781 dated 31.3.1995 is applicable to the percentage of the rate of tax normally applicable under the Act to the goods concerned. He submits that these percentages are fixed by the Notification and are not affected by the amendment. The rate of tax fixed by Section 8(1) at 4% and on the declared goods at twice the rate applicable to the sale and purchase inside the state at appropriate stage and to be calculated at 10% to the sales and purchase of such goods inside the state at appropriate stage and the percentage of tax payable of which the benefit can be availed in the orders specified in the Notification, is not affected by the amendment in Sub-section (4) of Section 8. He has relied upon the judgments in Pournami Oil Mills and Ors. v. State of Kerala and Anr. 1988 U.P.T.C. 20; MRF Ltd. Kottayam v. Assistant Commissioner (Assessment) Sales Tax and Ors. 2006 31 NTN 255 and the judgment of Kolkata High Court in State of West Bengal and Ors. v. N.S. Text Prints Pvt. Ltd. 2006 STA 161 against which Special Leave to Appeal (Civil) No. 8918 of 2006 was dismissed on 4.7.2006 with observations by the Supreme Court: "we are not inclined to interfere with the impugned order, being just and proper, in exercise of our jurisdiction under Article 136 of the Constitution of India. The SLP is dismissed."

The applicant is not a party to the writ petitions in which the interim orders have been granted by the High Court. The interim orders have been confined to the petitioners in those writ petitions.

14. In the present case the Court is concerned with the reasons given by the appellate authority and the Trade Tax Tribunal for confining the exemptions after the amendment in Section 8(5) of the Central Sales Tax Act: 1956, to only those central sales which are covered under the amended Section 8(4) of the Act made to the registered dealer and the State Government, covered by Form C/D.

15. The question, whether the Notifications u/s 4A of the UP Trade Tax Act to the new industrial unit will require any amendment after the amendments in Section 8(5) in the Central Sales Tax Act, was considered by the State Government and that by a circular letter dated 31.1.2006, the Additional Commissioner (Legal) Trade Tax U.P. Lucknow, informed to all the Joint Commissioners, Trade Tax that the State Government has not found any justification in its letter dated .19.12.2005 to amend notification No. 781 dated 31.3.1995 and 1094 dated 27.7.1991. Shri K. Saxena has placed reliance on this opinion which according to him does not disturb and take away the exemptions granted by Notifications No. 780 and 781 dated 31.3.1995.

16. The arguments in substance are based on the facts that the Notifications issued on 31.3.1995 have not been withdrawn or amended and that the principles of promissory estoppel would apply to revoke any exemptions/reduction in the rate of tax to the new industrial units enjoying benefits of such exemptions/reduction in pursuance of last grant of eligibility certificate u/s 4A of

the U.P. Trade Tax Act, as they were set up on the promise held out by the State Government vide the Notification for exemption/reduced rate of tax.

17. The percentage of the rate of tax normally applicable under the Act to the goods concerned in Column-4 of the Notification No. TT-II-781 dated 3 1.3.1995 is co-relative to the exemptions or reduction in the percentage of tax applicable in respect of the years of production beginning first to eight years. It has nothing to do with the condition of grant of exemptions/reduction of rate of tax.

18. The doctrine of the promissory estoppel has been established in the administrative law in India as a rule of estoppel beginning from *Union of India v. Agio Afgan Agencies* AIR 1968 SC 781 in which the doctrine was found to be based upon the equity, which arises in favour of persons who were given benefits in the export promotion scheme as a result of representation made on behalf of Union of India. The doctrine was firmly established by the Supreme Court in the judgment in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, In this case the Court rejected the plea of the State to the effect that in the absence of any notification issued u/s 4-A of the UP Sales Tax Act, the state was entitled to enforce the liability to sales tax imposed on the petitioners under the provisions of the Sales Tax Act and there could be no promissory estoppel against the State so as to inhibit it from formulating and implementing its policy in public interest. In *Pournami Oil Mills and Others Vs. State of Kerala and Another*, the Supreme Court referred to *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and the cases in *Bakul Cashew Co. and Others Vs. Sales Tax Officer Quilon and Another*, The Supreme Court thereafter in *K. Ashokan and Others Vs. State of Kerala*, held that the State cannot go back on its promise on the ground of any misuse of the concessions.

19. In *Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others*, the Supreme Court had the occasion to consider as to whether subsequent changes in the eligibility criteria can undo the eligibility for the condition stipulated in the earlier notification and answered the same in the negative. In *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, it was found that the impugned notification will have no adverse effect on the right of the new industries to get development rebate of for the unexpired period of three years. The appellants had entered into supply agreement with the Board as new industries prior to the cut of date.

20. In *State of Punjab Vs. Nestle India Ltd. and Another*, the Supreme Court held that where the representation was made by the Government dehorse the rules (including the budget speech of the Finance Minister in the year 1996-97) making representation to the effect that the State Government had abolished purchase tax on milk and in the absence of proof of any overriding public interest, rendering the enforcement of estoppel against the Slate Government inequitable; State Government could not have resiled from its decision to exempt milk and demand purchase tax w.e.f. 1.4.1996. It was held and explained after examining the entire case law including the judgment in *I.T.C. Bhadrachalam*

Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , that the power in the State Government coupled with the word "may" signifies discretionary nature of the power. The State Government's refusal to exercise its discretion to issue the necessary notification abolishing or exempting the tax on milk was not reasonably exercised. The plea of promissory estoppel was upheld. The Supreme Court in paragraph-44 of the said judgment stated: "Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Sub a proposition would not "fall foul of our constitutional scheme and public interest". The Supreme Court found that the observations in Bhadrachalam Paper Boards (supra) to the effect that rule of promissory estoppel cannot be pleaded to defeat the provisions of law, and is not available against any statutory provisions where in conflict with the earlier and subsequent pronouncements of the law of promissory estoppel.

21. In this case the Court is not concerned with withdrawing of exemptions or reducing the rate of tax. The Finance Act No. 20 of 2002 amended Sub-section (4) and (5) of Section 8 of the Central Sales Tax Act and confined the exemptions to the transactions of inter-state sales with the registered dealers and the State Government under form C & D of the Central Sales Act. These amendments do not affect the rate of tax. It only restrict, under the amended Sub-section (5)(a) of Section 8, and qualifies the sales in the course of inter-state trade and commerce to be exempted, namely, the sales made to a registered dealer or the Government from any such place of business of any such goods or classes of goods as may be specified in the Notification or that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) and Sub-section (2) as may be mentioned in the Notification. The amendment has taken away the authority of the State Government under a Central Act to grant exemptions to the qualifying units of tax in respect of sales in the course of inter-state trade or commerce, other than those which are made to a registered dealer or the Government.

22. The State Government was correct in observing that there was no need to amend the notification as neither the category or class of goods nor the rate was required to be lowered. The amendment did not take away the exemptions. It only qualified that sales made only to a registered dealers in the course of inter-state trade and commerce, can be exempted by the State Government.

23. In this case the State Government granted exemptions under the authority given to it by the Central Act. When the same central act qualified these powers by a parliamentary amendment to a particular category of sales in the course of inter-state trade and commerce, it cannot be said that the State Government was required to issue a fresh notification or had a discretion vested in it to grant exemption or reduction in the rate of tax in variance with the central act.

24. In the present case, the eligibility certificate u/s 4-A and the exemptions

granted to the unit has not been withdrawn nor the rate of tax has been increased or the quantum of exemptions decreased to affect the industrial unit. There was no such promise extended to the new industrial unit that all the central sales in the course of inter-state trade and commerce subject to the conditions specified in the notification will be exempted from tax. The benefit of exemption has not been denied to the petitioner.

25. In the relevant assessment years the applicant was in 4th, 5th and 6th of its production. It was allowed exemptions, on those central sales which are covered by form C/D i.e. made to the registered dealers and the state. The only affect of the amendment in Section 8(5) of the Central Sales Tax Act w.e.f. 13.5.2002 is that the tax liability is confined only to Central Sales covered by Forms C/D. There was no foundation laid before the assessing authority or even in this Court that by increasing the tax liability the industry will suffer such financial burden, which it would not be able to bear and that it will make it unviable to run the industry. In the concerned assessment years the applicant has admitted the tax liability for the year 2002-03 at Rs. 3,92,945/-. The assessing officer found the tax payable at Rs. 4,79,636/-. In the year 2003-04 the applicant admitted tax liability at Rs. 5,05,231/-. The assessing authority found the tax payable at Rs. 8,02,024/-. In the year 2004-05 the tax liability was admitted at Rs. 5,04,147/- whereas the tax payable was assessed at Rs. 6,00,641/-. The transactions, which did not qualify the central sales tax, are not of such volume on which the tax liable to be paid cannot be absorbed nor any such plea has been taken.

26. The sales in the course of inter-state trade and commerce can only be taxed by the central law, under Entry 42 read with Entry 92-A of List-I of Schedule 7 of the Constitution of India. The State Government does not have power to tax these sales. Consequently the State Government will not have powers to exempt the sales which do not qualify for such exemption after the amendment of the Central Sales Tax Act. The judgment in the State of West Bengal v. N.S. Text Prints Pvt. Ltd. was not on the same set of facts. The principle of promissory estoppel depends upon the circumstances in which the doctrine based on equity is invoked. The Government of West Bengal had issued a notification on 2.8.2002 in general application to all the dealers. This notification was not confined to newly set up industries nor did it prescribe that it was issued in supersession of the earlier notifications. It's application was held to be prospective and that the Court found it very difficult to reconcile the two notifications to make the subsequent notification applicable to a case where the exemption was granted. With the introduction of value added tax the whole regime of applicability of sales tax laws have changed. The new laws do not conceive of transactions in inter-state sales with unregistered dealers. The amendments in sales tax laws have to be uniform and that all exemptions have to give way to the new laws.

For the aforesaid reasons the sales tax revisions are dismissed.